



State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

WEARE ASSOCIATE STAFF
ORGANIZATION,
NEA-NEW HAMPSHIRE

Complainant

v.

WEARE SCHOOL BOARD

Respondent

CASE NO. M-0662:5

DECISION NO. 94-82

APPEARANCES

Representing Weare Associate Staff Organization, NEA-NH:

Wally B. Cumings, UniServ Director

Representing Weare School Board:

Gary W. Wulf

Also appearing:

Jonathan Wallace, Weare School Board
Irene Pichette, Weare Associate Staff Organization
Crystal Rivers, Weare Associate Staff Organization
Joe MacAllister, Weare School Board

BACKGROUND

The Weare Associate Staff Organization/NEA-NH filed unfair labor practice charges against the Weare School Board on May 10, 1994. Alleged were violations of RSA 273-A:5 I (a), (e), (g) and (h) for failure to bargain in good faith and for direct dealing with union members. The Weare School Board responded to these charges on May 19, 1994 denying prohibited action and claiming a memorandum directed to bargaining unit members to be normal communications of factual summaries of events which occurred during the mediation process. The matter was heard before the Public Employee Labor Relations Board on August 2, 1994.

FINDINGS OF FACT

1. The Weare School Board (WSB) is a public employer of teachers and other staff members within the

meaning of RSA 273-A:I X.

2. The Weare Associate Staff Organization (WASO), NEA-NH is the duly certified bargaining agent for staff employees within the Weare School System. WSB and WASO are parties to a one year contract for the school year 1993 and 1994. The unfair labor practice charges arose during the negotiation for a successor contract. WASO states that negotiations were begun in October 1992, but WSB contends that negotiations for a subsequent contract began in January 1994.
3. On February 3, 1994, representatives of WSB and WASO reached tentative agreement on all issues presently outstanding as well as on a wage increase.
4. At the School Board meeting of February 17, 1994, WSB voted to reject the health care proposal and suggested a cap on health care benefits. It rejected the sick and vacation day proposals. Impasse was declared.
5. A mediator was requested and appointed. The mediation session occurred on April 11, 1994. At issue were health insurance, sick days and vacation days. Agreement was not reached and factfinding was requested.

On April 15, 1994, the Weare School Board released a memorandum addressed to WASO employees. It did not mention WSB's February 17, 1994 rejection of the tentative agreement and the subsequent introduction by WSB of the change in health insurance funding. The memo suggested that WASO's rejection of WSB's proposals would bring negative consequences such as delays in already agreed to salary increases. It stated WSB's proposals to WASO members casting the proposals as favorable and WASO's rejection as negative.

6. In May, School Board Member Jonathan Wallace authored a newspaper article which informed the public of the impasse and portrayed the WSB proposals as reasonable and WASO rejection of these proposals as unreasonable and the source of negative consequences to employees and taxpayers. It implies that, "prior to unionization," relations between the employer and employees were smoother in that positive change was more possible before unionization.

He further discredits the union and the factfinding process by stating that already approved monies will not be available until July 1995.

DECISION AND ORDER

RSA 273-A:11 I extends the right of exclusive representation in negotiations to the duly certified bargaining unit. This right to exclusive representation is protected by RSA 273-A:5 I (a), (g), (h) and most particularly by RSA 273-A: I (e) which requires negotiation in good faith with the exclusive representative of a bargaining unit. The public employer must refrain from offering its proposals directly to the employees bypassing the exclusive representative. Appeal of Franklin Education Association, 136 NH 332, 335 (1992).

The Weare School Board argued that it had negotiated in good faith but that the negotiation period was passed and mediation had been completed before the memorandum communicating its concerns to "all WASO employees". However, the Weare School Board fails to consider RSA 273-A:3 I which extends the requirement of good faith bargaining beyond initial negotiations and mandates the public employer to "cooperate in mediation and fact-finding required by this chapter, . . ." Impasse does not give reason to impugn or act to damage the bargaining unit representative for failure to give up its position.

Contents of the WSB memorandum and the Wallace article served to derogate WASO at a critical time, just as factfinding was to begin. Such action is prohibited under RSA 273-A:5 I (a), (b), (e), (g) and (h). The Weare School Board has committed an unfair labor practice by dealing directly, attempting to persuade employees to abandon the bargaining unit representative. WSB is directed to Cease and Desist from such actions forthwith.

So ordered.

Signed this 12th day of September, 1994.


EDWARD J. HASELTINE, Chairman

By majority vote. Charman Edward J. Haseltine and member E. Vincent Hall voting in the majority and member Seymour Osman voting in the minority.